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In re application of Yoshitada Oshida et al. :
Serial No. : 09/678,652 : DECISION ON PETITION
Filed : October 4, 2000 :
Attorney Docket No.: 500.39147X00 :

This is in response to applicants' petition, filed February 5, 2004 under 37 CFR 1.181, to restart the time period for response to the Office action mailed November 5, 2003.

BACKGROUND

Review of the file history shows that the application was filed October 4, 2000 under 35 U.S.C. 111(a). After receiving two Office actions on the merits, applicants filed a request for continued examination on July 21, 2003. The examiner mailed a final rejection on November 5, 2003. On November 24, 2003 applicants filed a letter arguing that the examiner had improperly made the Office action final and requesting that finality be withdrawn. On January 9, 2004 the examiner mailed a letter withdrawing finality of the previous Office action, but did not restart the time period for response. The instant petition was filed February 5, 2004. Applicants' response to the outstanding Office action, including payment for a one month extension of time, was filed March 5, 2004.

DISCUSSION

Applicants argue that, since the examiner's error was pointed out within one month of when the Office action was mailed, the time period should have been restarted with the mailing of the examiner's letter withdrawing finality, citing MPEP 710.06. Applicants' arguments are persuasive. Had the time period for response been reset to begin on January 9, 2004, applicants' response filed March 5, 2004 would have been within the 3 month shortened statutory period for reply.

DECISION

Applicants' petition is **GRANTED**.

Since applicants have already filed a response to the Office action of November 5, 2003, there is presently no time period running against applicants.

The \$110 fee for one month extension of time will be refunded to deposit account number 01-2135.

The application will be forwarded to the examiner for consideration of the response filed March 5, 2004.

Any request for reconsideration or review of this decision must be made by a renewed petition and must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely.

Should there be any questions with regard to this letter please contact Bruce Campell by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA, 22313-1450, or by telephone at (571) 272-0974 or by facsimile transmission at (571) 273-0974.

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